

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

PHALANZA S. FRANCISCO

PLAINTIFF

v.

Case No. 4:19-cv-4058

COOPER TIRE AND RUBBER COMPANY

DEFENDANT

ORDER

Before the Court is Plaintiff's Notice of Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). (ECF No. 64). The Court determined that Plaintiff's Notice should be treated as a motion for dismissal pursuant to Fed. R. Civ. P. 41(a)(2). (ECF No. 65). Defendant has opposed the motion. (ECF No. 66). The Court finds the matter ripe for consideration.

Defendant filed a Motion for Summary Judgment on January 22, 2021. (ECF No. 40). Plaintiff was granted a series of extensions to file his Response. (ECF Nos. 47, 52, 55, 59, 63). The final extension gave Plaintiff up to and including September 23, 2021, to respond to Defendant's summary judgment motion. (ECF No. 63). Plaintiff did not respond to Defendant's Motion, and the time to do so has passed. Instead, Plaintiff filed the instant Motion to Dismiss on September 23, 2021, seeking to have the case dismissed without prejudice.

Plaintiff's "action may be dismissed at the [P]laintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Upon consideration, the Court finds that the Motion to Dismiss (ECF No. 64) should be and hereby is **GRANTED**. The above case is hereby **DISMISSED WITHOUT PREJUDICE**. However, the Court finds it proper under these circumstances that if this matter is refiled, Plaintiff will be ordered to pay any duplicate costs and reasonable attorney's fees that Defendant incurs because of refiling. Such costs and fees shall

include the costs Defendant incurs because of refiling any motion for summary judgment.

IT IS SO ORDERED, this 18th day of October, 2021.

/s/ Susan O. Hickey
Susan O. Hickey
Chief United States District Judge